



## SPECIAL EDUCATION LAW

# State Complaint, Due Process, and Appeals

### *Procedural Safeguards*

The sections of this document that refer to Procedural Safeguards contain the language from the 2018 revised document entitled, “*IDEA Part B Parents’ Rights in Special Education (Age 3-21) Procedural Safeguards Notice*.” The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires schools to provide parents of a child with a disability with a notice containing a full explanation of the procedural safeguards available under the IDEA and the federal regulations. A copy of this notice must be given to parents only one time a school year, except that a copy must be given to the parents: (1) upon initial referral or parent request for evaluation; (2) upon receipt of the first State complaint under 34 CFR §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year; (3) when a decision is made to take a disciplinary action that constitutes a change of placement; and (4) upon parent request.

### *State Complaint Procedures*

#### **DIFFERENCE BETWEEN DUE PROCESS HEARING COMPLAINT AND STATE COMPLAINT PROCEDURES**

The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by a school district, the State Educational Agency, or any other public agency. Only you or a school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. While staff of the Nebraska Department of Education generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial due process hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the school district’s request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below.

#### **ADOPTION OF STATE COMPLAINT PROCEDURES**

##### **General**

The Nebraska Department of Education must have written procedures for:

- Resolving any complaint, including a complaint filed by an organization or individual from another State;
- The filing of a complaint with the Nebraska Department of Education;

- Widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

### **Remedies for denial of appropriate services**

In resolving a State complaint in which the Nebraska Department of Education has found a failure to provide appropriate services, the Nebraska Department of Education must address:

- The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; **and**
- Appropriate future provision of services for all children with disabilities.

## **MINIMUM STATE COMPLAINT PROCEDURES**

### **Time limit; minimum procedures**

Each Department of Education must include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

- Carry out an independent on-site investigation, if the Nebraska Department of Education determines that an investigation is necessary;
- Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- Provide the school district or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; **and** (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;
- Review all relevant information and make an independent determination as to whether the school district or other public agency is violating a requirement of Part B of the IDEA; **and**
- Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; **and** (b) the reasons for the Nebraska Department of Education's final decision.

### **Time extension; final decision; implementation**

The Nebraska Department of Education procedures described above also must:

- Permit an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; **or** (b) the parent and the school district or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in the State.
- Include procedures for effective implementation of the Nebraska Department of Education's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; **and** (c) corrective actions to achieve compliance.

### **State complaints and due process hearings**

If a written State complaint is received that is also the subject of a due process hearing as described below under the heading **Filing a Due Process Complaint**, or the State complaint contains multiple issues of which

one or more are part of such a hearing, the State must set aside the State complaint, or any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (you and the school district), then the due process hearing decision is binding on that issue and the Nebraska Department of Education must inform the complainant that the decision is binding.

A complaint alleging a school district's or other public agency's failure to implement a due process hearing decision must be resolved by the Nebraska Department of Education.

## **FILING A COMPLAINT**

An organization or individual may file a signed written State complaint under the procedures described above.

The State complaint must include:

- A statement that a school district or other public agency has violated a requirement of Part B of the IDEA or its regulations;
- The facts on which the statement is based;
- The signature and contact information for the complainant; and
- If alleging violations regarding a specific child:
  - The name of the child and address of the residence of the child; The name of the school the child is attending;
  - In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
  - A description of the nature of the problem of the child, including facts relating to the problem; **and**
  - A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading ***Adoption of State Complaint Procedures***.

The party filing the State complaint must forward a copy of the complaint to the school district or other public agency serving the child at the same time the party files the complaint with the Nebraska Department of Education.

## ***Due Process Complaint Procedures***

### **FILING A DUE PROCESS COMPLAINT**

#### **General**

You or the school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child or the provision of a free appropriate public education (FAPE) to your child.

The due process complaint must allege a violation that happened not more than two years before you or the school district knew or should have known about the alleged action that forms the basis of the due process complaint.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because:

- The school district specifically misrepresented that it had resolved the issues identified in the complaint; **or**
- The school district withheld information from you that it was required to provide you under Part B of the IDEA.

### **Information for parents**

The school district must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, **or** if you or the school district file a due process complaint.

## **DUE PROCESS COMPLAINT**

### **General**

In order to request a hearing, you or the school district (or your attorney or the school district's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

You or the school district, whichever one filed the complaint, must also provide the Nebraska Department of Education with a copy of the complaint.

### **Content of the complaint**

The due process complaint must include:

- The name of the child;
- The address of the child's residence;
- The name of the child's school;
- If the child is a homeless child or youth, the child's contact information and the name of the child's school;
- A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
- A proposed resolution of the problem to the extent known and available to you or the school district at the time.

### **Notice required before a hearing on a due process complaint**

You or the school district may not have a due process hearing until you or the school district (or your attorney or the school district's attorney), files a due process complaint that includes the information listed above.

### **Sufficiency of complaint**

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the school district) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification the receiving party (you or the school district) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the school district in writing immediately.

## Complaint amendment

You or the school district may make changes to the complaint only if:

- The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described below; **or**
- By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or the school district) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

## Local educational agency (LEA) or school district response to a due process complaint

If the school district has not sent a prior written notice to you, as described under the heading **Prior Written Notice**, regarding the subject matter contained in your due process complaint, the school district must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

- An explanation of why the school district proposed or refused to take the action raised in the due process complaint;
- A description of other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
- A description of each evaluation procedure, assessment, record, or report the school district used as the basis for the proposed or refused action; **and**
- A description of the other factors that are relevant to the school district's proposed or refused action.

Providing the information in items 1-4 above does not prevent the school district from asserting that your due process complaint was insufficient.

## Other party response to a due process complaint

Except as stated under the sub-heading immediately above, **Local educational agency (LEA) or school district response to a due process complaint**, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

## MODEL FORMS

The Nebraska Department of Education must develop model forms to help you file a due process complaint and a State complaint. However, your State or the school district may not require you to use these model forms. In fact, you can use this form or another appropriate model form, so long as it contains the required information for filing a due process complaint or a State complaint.

## MEDIATION

### General

The school district must make mediation available to allow you and the school district to resolve disagreements involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of the IDEA, whether or not you have filed a due process complaint to request a due process hearing as described under the heading **Filing a Due Process Complaint**.

## Requirements

The procedures must ensure that the mediation process:

- Is voluntary on your part and the school district's part;
- Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under Part B of the IDEA; **and**
- Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The school district may develop procedures that offer parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

- Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State; **and**
- Who would explain the benefits and encourage the use of the mediation process to you.

The State must have a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The Nebraska Department of Education must select mediators on a random, rotational, or other impartial basis.

The State is responsible for the cost of the mediation process, including the costs of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school district.

If you and the school district resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:

- States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; **and**
- Is signed by both you and a representative of the school district who has the authority to bind the school district.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under Part B of IDEA.

## Impartiality of mediator

The mediator:

- May not be an employee of the Nebraska Department of Education or the school district that is involved in the education or care of your child; **and**
- Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school district or State agency solely because he or she is paid by the agency or school district to serve as a mediator.

## ***The Child's Placement While the Due Process Complaint and Hearing are Pending***

Except as provided below under the heading **PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES**, once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the State or school district agree otherwise, your child must remain in his or her current educational placement.

If the due process complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

If the due process complaint involves an application for initial services under Part B of the IDEA for a child who is transitioning from being served under Part C of the IDEA to Part B of the IDEA and who is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of the IDEA and you consent for the child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the school district must provide those special education and related services that are not in dispute (those which you and the school district both agree upon).

### **RESOLUTION PROCESS**

#### **Resolution meeting**

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the school district must convene a meeting with you and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in your due process complaint. The meeting:

- Must include a representative of the school district who has decision-making authority on behalf of the school district; **and**
- May not include an attorney of the school district unless you are accompanied by an attorney.

You and the school district determine the relevant members of the IEP Team to attend the meeting.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the school district has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

- You and the school district agree in writing to waive the meeting; **or**
- You and the school district agree to use the mediation process, as described under the heading **Mediation**.

#### **Resolution period**

If the school district has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for issuing a final decision begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.



Except where you and the school district have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If after making reasonable efforts and documenting such efforts, the school district is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the school district's attempts to arrange a mutually agreed upon time and place, such as:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to you and any responses received; and
- Detailed records of visits made to your home or place of employment and the results of those visits.

If the school district fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint **or** fails to participate in the resolution meeting, you may ask a hearing officer to order that the 45-calendar-day due process hearing timeline begin.

### **Adjustments to the 30-calendar-day resolution period**

If you and the school district agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the school district agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.

If you and the school district agree to use the mediation process, at the end of the 30-calendar-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either you or the school district withdraws from the mediation process, then the 45-calendar-day timeline for the due process hearing starts the next day.

### **Written settlement agreement**

If a resolution to the dispute is reached at the resolution meeting, you and the school district must enter into a legally binding agreement that is:

- Signed by you and a representative of the school district who has the authority to bind the school district; **and**
- Enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States.

### **Agreement review period**

If you and the school district enter into an agreement as a result of a resolution meeting, either party (you or the school district) may void the agreement within 3 business days of the time that both you and the school district signed the agreement.



## Hearings on Due Process Complaints

### IMPARTIAL DUE PROCESS HEARING

#### General

Whenever a due process complaint is filed, you or the school district involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Due Process Complaint*** and ***Resolution Process*** sections.

#### Impartial hearing officer

At a minimum, a hearing officer:

- Must not be an employee of the Nebraska Department of Education or the school district that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
- Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
- Must be knowledgeable and understand the provisions of the IDEA, and Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; and
- Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

The Nebraska Department of Education must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

#### Subject matter of due process hearing

The party (you or the school district) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

#### Timeline for requesting a hearing

You or the school district must request an impartial hearing on a due process complaint within two years of the date you or the school district knew or should have known about the issue addressed in the complaint

#### Exceptions to the timeline

The above timeline does not apply to you if you could not file a due process complaint because:

- The school district specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; **or**
- The school district withheld information from you that it was required to provide to you under Part B of the IDEA.

### HEARING RIGHTS

#### General

Any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

- Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities;
- Present evidence and confront, cross-examine, and require the attendance of witnesses;

- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
- Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
- Obtain written, or, at your option, electronic findings of fact and decisions.

### **Additional disclosure of information**

At least five business days prior to a due process hearing, you and the school district must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the school district intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

### **Parental rights at hearings**

You must be given the right to:

- Have your child present;
- Open the hearing to the public; **and**
- Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

## **HEARING DECISIONS**

### **Decision of hearing officer**

A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that your child did not receive FAPE only if the procedural inadequacies:

- Interfered with your child's right to a free appropriate public education (FAPE);
- Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child; **or**
- Caused a deprivation of an educational benefit.

### **Construction clause**

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school district to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536).

### **Separate request for a due process hearing**

Nothing in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

## Findings and decision to advisory panel and general public

The Nebraska Department of Education or the school district, (whichever was responsible for your hearing) after deleting any personally identifiable information, must:

- Provide the findings and decisions in the due process hearing or appeal to the State special education advisory panel; **and**
- Make those findings and decisions available to the public.

## Appeals

### FINALITY OF DECISION; APPEAL; IMPARTIAL REVIEW

#### Finality of hearing decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the school district) may appeal the decision by bringing a civil action, as described below.

### TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS

The Nebraska Department of Education must ensure that not later than the expiration of the 30-calendar-day period for resolution meetings **or**, sub-heading **Adjustments to the 30-calendar-day resolution period**, calendar days after the expiration of the adjusted time period:

- A final decision is reached in the hearing; **and**
- A copy of the decision is mailed to each of the parties.

A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party.

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

### CIVIL ACTIONS, INCLUDING THE TIME PERIOD IN WHICH TO FILE THOSE ACTIONS

#### 34 CFR §300.516

##### General

Any party (you or the school district) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

##### Time limitation

The party (you or the school district) bringing the action shall have 90 calendar days from the date of the decision of the hearing officer to file a civil action

##### Additional procedures

In any civil action, the court:

- Receives the records of the administrative proceedings;
- Hears additional evidence at your request or at the school district's request; and

- Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

### **Jurisdiction of district courts**

The district courts of the United States have authority to rule on actions brought under Part B of the IDEA without regard to the amount in dispute.

### **Rule of construction**

Nothing in Part B of the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of the IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of the IDEA. This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under the IDEA (i.e., the due process complaint, resolution meeting, and impartial due process hearing procedures) before going directly into court.

## **ATTORNEY'S FEES**

### **General**

In any action or proceeding brought under Part B of the IDEA, if you prevail, the court, in its discretion, may award reasonable attorney's fees as part of the costs to you.

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorney's fees as part of the costs to a prevailing State Educational Agency or school district, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; or (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorney's fees as part of the costs to a prevailing State Educational Agency or school district, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding.

### **Award of fees**

A court awards reasonable attorney's fees as follows:

- Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
- Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of the IDEA for services performed after a written offer of settlement to you if:
  - The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;

- The offer is not accepted within 10 calendar days; **and**
- The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

Despite these restrictions, an award of attorney’s fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.

- Fees may not be awarded relating to any meeting of the individualized education program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action.

Fees also may not be awarded for a mediation as described under the heading **Mediation**.

A resolution meeting, as described under the heading Resolution meeting, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorney’s fees provisions.

The court reduces, as appropriate, the amount of the attorney’s fees awarded under Part B of the IDEA, if the court finds that:

- You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
- The amount of the attorney’s fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
- The time spent and legal services furnished were excessive considering the nature of the action or proceeding; **or**
- The attorney representing you did not provide to the school district the appropriate information in the due process request notice as described under the heading **Due Process Complaint**.

However, the court may not reduce fees if the court finds that the State or school district unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of the IDEA.

## Nebraska Rule 51

The sections of this document that refer to Nebraska Rule 51 contain the language from the 2017 revised document entitled, “*Nebraska Department of Education Rule 51: Regulations and Standards for Special Education Programs. Title 92, Nebraska Administrative Code, Chapter 51.*”

### **009.11** State Complaint Procedures

**009.11A** An organization or individual may file a signed written complaint under the procedures described in 92 NAC 51-009.11B.

**009.11B** The complaint must include:

**009.11B1** A statement that the public agency has violated a requirement of 92 NAC 51, 34 CFR 300 or Part B of the IDEA;

**009.11B2** The facts on which the statement is based;

**009.11B3** The signature and contact information for the complainant; and

**009.11B4** If alleging violations with respect to a specific child –

**009.11B4a** The name and address of the residence of the child;

**009.11B4b** The name of the school the child is attending;

**009.11B4c** In the case of a homeless child or youth within the meaning of section 725(2C) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2), available contact information for the child, and the name of the school the child is attending;

**009.11B4d** A description of the nature of the problem of the child, including facts relating to the problem; and

**009.11B4e** A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

**009.11B5** The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 92 NAC 51-009.11.

**009.11B6** The party filing the complaint must forward a copy of the complaint to the school district or approved cooperative serving the child at the same time the party files the complaint with Nebraska Department of Education Office of Special Education.

**009.11C** If a complaint meeting the requirements of 92 NAC 51-009.11B is received, the following procedures will be carried out:

**009.11C1** Within fourteen (14) calendar days of receipt of the written, signed complaint, an assigned Office of Special Education official shall notify in writing each complainant and the school district or approved cooperative against which the violation has been alleged, that the complaint has been received. This written notification shall include a copy of the complaint and the substance of the alleged violation. The school district or approved cooperative shall have fourteen (14) calendar days to submit a written response.

**009.11C2** Office of Special Education officials will provide the school district or approved cooperative with the opportunity to respond to the complaint, including, at a minimum:

**009.11C2a** At the discretion of the school district or approved cooperative, a proposal to resolve the complaint; and

**009.11C2b** An opportunity for a parent who has filed a complaint and the school district or approved cooperative to voluntarily engage in mediation consistent with 92 NAC 51-009.12.

**009.11C3** Office of Special Education officials will investigate each complaint received from an individual or organization (including an individual or organization from another state) to determine whether there has been a failure to comply with this Chapter and may require further written or oral submission of information by all parties and may conduct an independent on-site investigation if necessary. The complainant will have the opportunity to submit additional information either orally or in writing, about the allegation.

**009.11C4** Within sixty (60) calendar days of receipt of a signed written complaint, the Department of Education Office of Special Education will review all relevant information and provide written notification of findings of facts and conclusions and the basis for such findings to all parties involved.

**009.11C5** An extension of the time limit in 92 NAC 51-009.11C4 will be permitted only if:

**009.11C5a** Exceptional circumstances exist with respect to a particular complaint; or

**009.11C5b** The parent and the school district or approved cooperative involved agree to extend the time to engage in mediation or to engage in other alternative means of dispute resolution.

- 009.11C6** If it is determined there has been a failure to comply, there will be included in the notification of findings the specific steps which must be taken by the school district or approved cooperative to bring the school district or approved cooperative into compliance, including technical assistance, negotiations and corrective actions necessary to achieve compliance. The notification shall also set forth a reasonable period of time to voluntarily comply.
- 009.11C7** If the school district or approved cooperative does not demonstrate compliance within the period of time set forth in the notice of findings, the matter will be subject to the procedures outlined in 92 NAC 51-004.09.
- 009.11C8** If a written complaint is received that is also the subject of a due process hearing under 92 NAC 55, or contains multiple issues of which one or more are part of that hearing, the Office of Special Education officials shall set aside any part of the state complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the state complaint that is not a part of the due process action must be resolved using the time limit and procedures described in 92 NAC 51-009.11.
- 009.11C9** If an issue is raised in a complaint filed under 92 NAC 51-009.11 that has previously been decided in a due process hearing involving the same parties:
- 009.11C9a The hearing decision is binding; and
- 009.11C9b The Nebraska Department of Education must inform the complainant to that effect.
- 009.11C10** A complaint alleging a school district's or approved cooperative's failure to implement a due process decision must be resolved by the Nebraska Department of Education.

## **009.12** Mediation

- 009.12A** School districts or approved cooperatives shall implement the procedures established in Section 009 to allow parties to resolve disputes involving any matter described in 92 NAC 51-009.05A1 and 009.05A2 including matters arising prior to the filing of a due process hearing petition through a mediation process which, at a minimum, shall be available whenever a hearing is requested under 92 NAC 55.
- 009.12A1** The procedures for seeking mediation initiated by either the parent(s) or school district or approved cooperative include:
- 009.12A1a** Contacting the Nebraska Office of Dispute Resolution who will
- 009.12A1b** Arrange a meeting, invite both parties and conduct the mediation in an attempt to resolve the dispute.
- 009.12B** The procedures shall ensure that the mediation process:
- 009.12B1** Is voluntary on the part of the parties;
- 009.12B2** Is not used to deny or delay a parent's right to a due process hearing under 92 NAC 55, or to deny any other rights afforded under this Chapter; and
- 009.12B3** Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- 009.12C** The school district or approved cooperative may implement the procedures in Section 009 to offer parents and schools or approved cooperatives that choose not to use the mediation process an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with:
- 009.12C1** A parent training and information center or community parent resource center in this State established under Section 671 or 672 of the IDEA, or
- 009.12C2** An appropriate alternative dispute resolution entity to encourage the use, and explain the benefits of the mediation process to the parents.



- 009.12D** The Nebraska Department of Education shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services for use by school districts, approved cooperatives, and parents.
- 009.12E** The Nebraska Department of Education shall bear the cost of the mediation process, including the costs of meetings described in 92 NAC 51-009.12C.
- 009.12F** Each session in a mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.
- 009.12G** In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that:
- 009.12G1** States that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;
  - 009.12G** Is signed by both the parent and a representative of the agency who has the authority to bind such agency; and
  - 009.12G3** Is enforceable in any State court of competent jurisdiction or in a district court of the United States.
- 009.12H** Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any federal court or state court of a state receiving assistance under Part B of the IDEA as amended in 2004.
- 009.12I** An individual who serves as a mediator under this Chapter:
- 009.12I1** May not be an employee of:
    - 009.12I1a** The Nebraska Department of Education or of the school district or approved cooperative that is involved in the education or care of the child; or
    - 009.12I1b** An agency that is providing direct services to a child who is the subject of the mediation process; and
    - 009.12I1c** Must not have a personal or professional interest that conflicts with the person's objectivity.
  - 009.12I2** A person who otherwise qualifies as a mediator is not an employee of a school district or approved cooperative or the Nebraska Department of Education solely because he or she is paid by the agency to serve as a mediator.

## **009.13** Resolution Process

### **009.13A** Resolution Meeting

- 009.13A1** Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 92 NAC 55, the school district or approved cooperative must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint that:
- 009.13A1a** Includes a representative of the school district or approved cooperative who has decision-making authority on behalf of that school district or approved cooperative; and
  - 009.13A1b** May not include an attorney to the school district or approved cooperative unless the parent is accompanied by an attorney.

**009.13A2** The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the school district or approved cooperative has the opportunity to resolve the dispute that is the basis for the due process complaint.

**009.13A3** The meeting described in 92 NAC 51-009.13A1 and 009.13A2 need not be held if:

**009.13A3a** The parent and the school district or approved cooperative agree in writing to waive the meeting; or

**009.13A3b** The parent and the school district or approved cooperative agree to use the mediation process described in 92 NAC 51-009.12.

**009.13A4** The parent and the school district or approved cooperative determine the relevant members of the IEP team to attend the meetings.

**009.13B** Resolution Period

**009.13B1** If the school district or approved cooperative has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

**009.13B2** Except as provided in this section, the timeline for issuing a final decision begins at the expiration of this 30-day period.

**009.13B3** Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding 92 NAC 51-009.13B1 and 009.13B2, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

**009.13B4** If the school district or approved cooperative is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in 92 NAC 51-007.06D), the school district or approved cooperative may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

**009.13B5** If the school district or approved cooperative fails to hold the resolution meeting specified in 92 NAC 51-009.13A within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

**009.13C** Adjustments to the 30-day Resolution Period

**009.13C1** The 45-day timeline for the due process hearing starts the day after one of the following events:

**009.13C1a** Both parties agree in writing to waive the resolution meeting;

**009.13C1b** After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible.

**009.13C1c** If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or the school district or approved cooperative withdraws from the mediation process.

**009.13D** Written Settlement Agreement

**009.13D1** If a resolution to the dispute is reached at the meeting described in 92 NAC 51-009.13A1 and 009.13A2, the parties must execute a legally binding agreement that is:

**009.13D1a** Signed by both the parent and a representative of the school district or approved cooperative who has the authority to bind the school district or approved cooperative; and

**009.13D1b** Enforceable in any State court of competent jurisdiction or in a district court of the United States.

**009.13E** Agreement Review Period

**009.13E1** If the parties execute an agreement pursuant to 92 NAC 51-009.13D, a party may void the agreement within 3 business days of the agreement's execution.

**009.14** Special Education Due Process Hearings

**009.14A** Whenever a due process complaint has been received under 92 NAC 55 or Section 016 of this Chapter, the parents or the school district or approved cooperative shall have an opportunity for an impartial due process hearing consistent with the procedures in 92 NAC 55 and 92 NAC 51-009.13.

**009.14B** A parent or a school district or approved cooperative may initiate a hearing on any of the matters described in 92 NAC 51-009.05A relating to the identification, evaluation or educational placement of the child with a disability, or the provision of FAPE to the child by filing a petition pursuant to 92 NAC 55.

**009.14C** When a hearing is initiated under 92 NAC 55, the school district or approved cooperative shall inform the parents of the availability of mediation described in 92 NAC 51-009.12.

**009.14D** The school district or approved cooperative shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or if the parent or the school district or approved cooperative initiates a hearing under 92 NAC 55.

**009.14E** Any party to a due process hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

If you have additional questions regarding state complaints, due process, and appeals, see the Nebraska Department of Education's website entitled, "Dispute Resolution" at <https://www.education.ne.gov/sped/dispute-resolution/>

For more information about state complaints, due process, and appeals, contact your child's special education teacher, a PTI Nebraska parent/professional at (800) 284-8520 and [pti-nebraska.org](https://pti-nebraska.org), or the Nebraska Department of Education at (402) 471-2471 and [education.ne.gov/sped/](https://education.ne.gov/sped/).

The Individuals with Disabilities Education Act (IDEA) is a law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children. See <https://sites.ed.gov/idea/> for more information on IDEA.

Rule 51 is the document that outlines regulations and standards for special education programs in Nebraska. Rule 51 can be found on the Nebraska Department of Education's website: [https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule51\\_2017.pdf](https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule51_2017.pdf).

Rule 55 is the document that outlines rules of practice and procedure for due process hearing in special education contest cases. Rule 55 can be found on the Nebraska Department of Education's website: [https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule55\\_2012.pdf](https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule55_2012.pdf)